

MATTER OF HOFFMAN-ARVAYO

In Exclusion Proceedings

A-14206689

Decided by Board September 7, 1971

- (1) The term "commuter" encompasses the "seasonal commuter" who enters to perform seasonal work for extended periods, but whose annual stay in the United States is for less than 6 months. However, the "seasonal commuter" must not be confused with the resident alien physically present in the United States for more than 6 months in the aggregate during the past year, who is not within the commuter category.
- (2) Where appellant, a native and citizen of Mexico, following admission for permanent residence resided in the United States from 1964 until August 1969 when he returned his family to Mexico, and thereafter (from August 1969 up until he was detained for hearing on March 2, 1970) resided and was continuously employed in Tucson, Arizona, during which period he visited his family in Mexico on intermittent weekends, he did not acquire commuter status by reason of such intermittent weekend visits with his family. Hence, his absence to visit his family in Mexico on the weekend immediately preceding his application for entry as a returning resident on March 2, 1970, was an innocent, casual, and brief excursion within the meaning of *Rosenberg v. Fleuti*, 347 U.S. 449 (1963), and his return therefrom does not constitute an entry upon which to predicate a ground of exclusion.

EXCLUDABLE: Act of 1952—Section 212(a)(9) [8 U.S.C. 1182(a)(9)]—Admits having committed crime, or acts which constitute the essential elements of crime, involving moral turpitude, to wit, bigamy.

ON BEHALF OF APPLICANT: NO ONE

The applicant, a native and citizen of Mexico, was admitted to the United States for permanent residence on March 26, 1964. He applied for admission as a returning resident alien at the port of Douglas, Arizona on March 2, 1970. He was detained for an exclusion hearing since he appeared to be inadmissible under the provisions of section 212(a)(9) of the Immigration and Nationality Act as an alien who admits the commission of a crime involving moral turpitude or acts which constitute the essential ele-